

1. DEFINITIONS:

- (a) "Seller" is defined as Hydraquip Distribution Incorporated, its parent, subsidiaries and each of its affiliates and their respective transferees, successors and assigns, along with their respective directors, officers, agents and employees.
- (b) "Purchaser" is defined as the purchaser of the Power Units, Parts and Components, or Services offered by Seller, and expressly excludes any subsequent purchaser or possessor.
- (c) "Seller's Office" is defined as Seller's address located at 4723 Pinemont Dr., Houston, TX 77092. If the location of the office changes, "Seller's Office", upon sufficient notice to Purchaser, will be deemed amended to be the address of the new location.
- (d) "Agreement" is defined as the Standard Terms and Conditions contained herein.
- (e) "Parts and Components" is defined as item(s) sold from the manufacturer in the condition received by Seller.
- (f) "Services" is defined as any systems design, drawings, technical advice, maintenance, repair, or instructions if provided by Seller in connection with the sale, maintenance, repair, or installation of the subject matter of this Agreement, excluding engineering services.
- (g) "Power Units" is defined as any hydraulic power unit designed, fabricated, or manufactured by Hydraquip Custom Systems Incorporated, including the Power Units' component parts.

2. ACCEPTANCE:

Seller's acceptance of any offer or order made by Purchaser is conditioned upon Purchaser's acceptance to be bound by this Agreement. If Purchaser objects to this Agreement, such objection must be made in writing and received by Seller's Office within ten (10) days after this Agreement is transmitted to Purchaser. Failure to so object shall be deemed to be Purchaser's acceptance of this Agreement. Seller's failure to object to any terms or conditions in any oral or written communication from Purchaser, whether delivered before or after the date hereof, shall not constitute an acceptance thereof or be considered a waiver of this Agreement. Any terms and conditions inconsistent with, or additive to, this Agreement are expressly rejected. No change, modification, extension, renewal, ratification, waiver or rescission of this Agreement, or of any of the provisions hereof, shall be binding unless it is in writing and signed by both Seller and Purchaser. All previous negotiations, conversations, and understandings are merged herein.

3. PRICE:

In the event of an increase or reduction in price on materials, parts, labor, or freight rates, the new price will become effective immediately and applied to the unshipped portion of Purchaser's order. Any reduction in price on parts, materials, labor, or freight rates shall not have a retroactive effect upon shipments completed prior to the date of the price reduction.

4. PAYMENT:

Payment shall be made in net U.S. Dollars, within 30 days from the date of shipment(s), unless otherwise agreed in writing by the Seller and Purchaser. For international transactions, all payments shall be made as agreed by Seller and Purchaser. All sums payable by Purchaser to Seller are payable to the Seller's Office. Shipment(s) are subject to Purchaser establishing and maintaining satisfactory credit with Seller. Seller may require full or partial payment for shipment(s) in advance. Pro rata payment, may at the election of Seller, become due as shipment(s) are made. If completion of shipment(s) are delayed by Purchaser, the Seller may require payment of the contract price based upon the percentage of completion of the shipment(s). Seller may defer shipment(s) and services, cancel the unshipped balance of a shipment, or cancel services if Purchaser fails to make any payment. In addition to the requirements of this paragraph, if this Agreement is an international transaction, payment shall be made via wire transfer, unless Seller agrees otherwise in writing.

5. DELIVERY:

Seller shall not be liable for any loss or damage resulting from delay on shipment(s) or services caused by fire, flood, strikes, labor disputes, riots, thefts, accidents, delays in transportation, acts of god, or any other cause reasonably beyond the control of the Seller. Seller shall not be liable in any event, for loss of anticipated profits, loss by reason of plant shut down, non operation or increased expense of operation of other equipment or other direct, indirect or consequential damages of any nature caused by delay in delivery. Delivery dates quoted are approximate and delivery will be F.O.B. point of shipment. Purchaser shall be solely responsible for the arrangement of shipment and all of the associated costs. In case of delays in shipment(s) caused by the fault of the Purchaser, Purchaser agrees to promptly reimburse Seller any extra charges for Seller's additional expense and/or loss of time.

6. INSPECTION AND ACCEPTANCE:

All Parts and Components must be inspected and accepted by Purchaser within ten (10) days of the date of delivery of the Parts and Components. All Power Units must be inspected and accepted by the Purchaser at the Seller's Office prior to shipment(s), unless otherwise agreed in writing by Seller.

7. LICENSES AND TAXES:

This Agreement does not include federal, state or local sales, use, privilege, occupation or excise taxes or any other taxes applicable to the shipment(s) (including, without limitation, any and all non-U.S. taxes, duties, levies or assessments). Purchaser shall pay all applicable taxes for the shipment(s). Purchaser shall provide and pay for all permits, licenses and certificates necessary for the installation and operation of the subject matter of this Agreement.

8. SECURITY INTEREST:

If applicable, Purchaser shall grant Seller a security interest in the subject matter of this Agreement. Seller shall have all the rights and remedies of a secured party under the Texas Uniform Commercial Code. Purchaser agrees to sign any documents Seller deems necessary to perfect its security interest in the shipment(s). Purchaser agrees that the collateral is and shall remain personal property. Seller may require Purchaser to assemble the collateral at a location Seller deems convenient. Purchaser shall reimburse Seller for any expenses incurred by Seller in protecting or enforcing its rights under this Agreement, including without limitation, reasonable attorney's fees and legal expenses and all expenses in taking possession, holding, preparing for disposition and disposing of the collateral. Seller may waive any default without waiving any other subsequent or prior default by Purchaser.

9. PATENT INFRINGEMENT:

Seller shall have no responsibility or liability for patent infringements or for the design or performance of equipment manufactured according to specifications of Purchaser or Purchaser's agents. Seller shall have no responsibility or liability for patent infringement on equipment or components manufactured by third parties.

10. ASSIGNMENT:

Purchaser agrees that Seller may assign or sublet this Agreement, in whole or in part, without Purchaser's consent.

11. RETURNS:

The subject matter of this Agreement shall not be returned to Seller without first obtaining Seller's written consent and shipping instructions. Purchaser agrees to promptly pay all costs associated with such returned property. In the event property is returned, Purchaser agrees to promptly pay Seller a restocking charge in the amount to be determined by Seller.

12. CANCELLATION, TERMINATION OR CHANGE OF ORDER:

Once Seller accepts an order, Purchaser waives its right to cancel the order. In the event of termination, Purchaser shall pay all costs, expenses, loss of profits, and damages sustained by Seller in connection with such termination. **Terminated orders may be subject to full invoice price, less any salvage value.** No order may be changed without Seller's written consent and Purchaser shall bear all costs involved in such changes.

13. NOTICE, APPLICABLE LAW AND FORUM:

Seller shall not be liable for any claims (direct or indirect) not presented to Seller, at Seller's Office, in writing, within 180 days of either the date of loss or the date of the incident giving rise to the claim. **To the extent that maritime law does not apply, Seller and Purchaser agree that the law of the State of Texas shall govern this Agreement and all lawsuits shall be filed only in Harris County, Texas, and parties hereby submit to the personal jurisdiction of Texas.** Purchaser and Seller hereby disclaim the applicability of any international convention, law, or treaty, including without limitation, the United Nations Convention for the International Sale of Goods ("CISG") to this Agreement. During the pendency of any dispute, the parties shall continue to perform the obligations imposed upon them by this Agreement to the fullest extent possible, consistent with the positions with respect to the dispute.

14. DEFENSE AND INDEMNITY AND INSURANCE:

PURCHASER AGREES TO DEFEND, INDEMNIFY AND HOLD SELLER HARMLESS FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, DAMAGES, DEMANDS, CLAIMS (INCLUDING PERSONAL INJURY AND WRONGFUL DEATH), LITIGATION, DEFENSES, SUITS, PROCEEDINGS, OBLIGATIONS, ACTIONS, JUDGMENTS, CAUSES OF ACTION, AND EXPENSES (INCLUDING WITHOUT LIMITATION, THE REASONABLE FEES OF LEGAL COUNSEL, INVESTIGATORS AND ACCOUNTANTS), BASED ON CLAIMS OF PERSONAL INJURY BY ANYONE OR DAMAGE TO ANYONE'S PROPERTY ARISING OUT OF OR RELATED IN ANY WAY TO THIS AGREEMENT, WHETHER BY THE ACTS OR OMISSIONS OF PURCHASER OR OF SELLER, INCLUDING BUT NOT LIMITED TO SELLER'S NEGLIGENCE AND/OR GROSS NEGLIGENCE, ACTIVE OR PASSIVE AND PARTIAL OR SOLE, ACTS OF MALICE, STRICT LIABILITY, CONTRACTUAL LIABILITY, ALLEGATIONS OF BREACH OF ANY IMPLIED WARRANTY INCLUDING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER LEGAL FAULT. SUCH DEFENSE AND INDEMNITY AND HOLD HARMLESS AGREEMENT SHALL INCLUDE, WITHOUT LIMITATION, ANY LIABILITY TO OR ACTION BY ANY GOVERNMENTAL AUTHORITY OR AGENCY (INCLUDING, WITHOUT LIMITATION, THE UNITED STATES GOVERNMENT, STATE GOVERNMENT OR THIRD PARTIES) UNDER ANY APPLICABLE INTERNATIONAL, FEDERAL OR STATE LAWS OR GOVERNMENTAL ORDERS, RULES, AND REGULATIONS RELATING TO POLLUTION.

NOTWITHSTANDING ANYTHING CONTAINED ABOVE, IN THE EVENT THAT AN INJURY OR ACCIDENT CAUSING A CLAIM, DAMAGE, LOSS OR LIABILITY OCCURS WHICH IS SUBJECT TO THE LAWS OF ANY JURISDICTION THAT PROHIBITS OR LIMITS PURCHASER'S ABILITY TO INDEMNIFY SELLER, THEN, IF SUCH LAW MUST BE APPLIED, PURCHASER'S LIABILITY SHALL EXIST TO THE FULL EXTENT ALLOWED BY LAW OF SUCH JURISDICTION, AND PURCHASER AGREES TO CARRY THE MAXIMUM AMOUNT OF INSURANCE WHICH MAY BE ALLOWED OR REQUIRED BY THE LAW OF SUCH JURISDICTION FOR THE PROTECTION OF SELLER AGAINST SUCH LOSS OR LIABILITY.

PURCHASER SHALL CARRY WITH INSURANCE PROVIDERS SATISFACTORY TO SELLER AND AUTHORIZED TO DO BUSINESS IN THE STATE OR STATES OR OFFSHORE AREAS IN WHICH THIS AGREEMENT MAY INVOLVE, INSURANCE COVERAGE IN SUPPORT OF PURCHASER'S DEFENSE AND INDEMNITY OBLIGATIONS. THE COVERAGE WILL INCLUDE COMPREHENSIVE GENERAL LIABILITY INSURANCE WITH LIMITS OF LIABILITY FOR BODILY INJURY AND FOR PROPERTY DAMAGE OF NOT LESS THAN \$1,000,000 ANY ONE OCCURRENCE. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT COVERAGE REQUIRED THEREIN REPRESENT PURCHASER'S MINIMUM REQUIREMENTS AND ARE NOT TO BE CONSTRUED TO FUND OR LIMIT ANY DEFENSE AND INDEMNITY OBLIGATIONS OF PURCHASER UNDER THIS AGREEMENT. PURCHASER'S INSURANCE POLICY SHALL BE PRIMARY TO AND SHALL RECEIVE NO CONTRIBUTION FROM ANY INSURANCE POLICIES MAINTAINED BY SELLER.

THE INSURANCE POLICY OF PURCHASER SHALL EXPRESSLY WAIVE SUBROGATION AS TO SELLER, AND NAME SELLER AS ADDITIONAL INSURED. THE OBLIGATION TO NAME SELLER AS ADDITIONAL INSURED IS INDEPENDENT OF AND A SEPARATE AND DISTINCT OBLIGATION FROM THE DEFENSE AND INDEMNITY OBLIGATIONS.

TO THE EXTENT THAT THIS AGREEMENT MAY BE CONSTRUED BY ANY COURT OR AUTHORITY BODY WITH RESPECT TO THE LOUISIANA OILFIELD INDEMNITY ACT, L.A. REV. STAT. ANN. § 9:2780(B), PURCHASER SHALL SUBMIT AN INVOICE TO SELLER REPRESENTING THE PREMIUM FOR SUCH INSURANCE COVERAGE.

15. LIMITED WARRANTY AND DISCLAIMERS:

Purchaser agrees that Parts and Components are not warranted by Seller. Purchaser agrees that Parts and Components are only warranted by the respective manufacturer of the Parts and Components. Seller warrants that Power Units, will be free of defective materials and workmanship for a period of the lesser of 360 days from the date of the delivery of the Power Unit or the original manufacturer's warranty for defective component(s). **Seller's limited warranty does not apply any used item(s) and all such sale(s) are sold "AS IS/ WHERE IS."** Seller's limited warranty does not apply to products, accessories, or components that were not manufactured by Seller, nor to products and parts requiring replacement due to reasonable wear and tear. Seller's limited warranty will only apply to Power Units that are used by Purchaser for their intended purpose. Seller's limited warranty is further limited as follows: (a) Seller may either repair or replace defective Power Units, once Seller receives the defective Power Units at Seller's Office; (b) if this Agreement relates to Services, Seller agrees to perform Services in accordance with the reasonable standard of care practiced by representative companies that perform similar Services in the State of Texas; and (c) if Seller fails to perform the foregoing Services in accordance with the reasonable standard of care practiced by representative companies that perform similar Services in the State of Texas, Seller will re-perform the Services as Seller deems necessary to adequately perform the Services.

SELLER HEREBY DISCLAIMS ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE PERTAINING TO THIS AGREEMENT.

THE FOREGOING OBLIGATION TO REPAIR OR REPLACE POWER UNITS, AND/OR REPERFORM SERVICES SHALL BE PURCHASER'S SOLE AND EXCLUSIVE REMEDY FOR DEFECTS IN THE POWER UNITS AND/OR SERVICES.

SELLER SHALL IN NO EVENT BE LIABLE TO PURCHASER OR ANY OTHER PERSON OR ENTITY FOR LOSS OF OR DAMAGE TO OR LOSS OF USE OF FACILITIES, EQUIPMENT, OR OTHER PROPERTY OF PURCHASER OR THIRD PARTIES, LOSS OF REVENUE, LOSS OF ANTICIPATED PROFITS, OR OTHER INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, OR CLAIMS OF ANY CUSTOMERS OF PURCHASER OR OTHER CLAIMANTS, RESULTING FROM OR ARISING OUT OF THIS AGREEMENT.

16. LIMITATION OF DAMAGES:

Purchaser agrees that any claim against Seller for liability due to loss, damage, expense, or delay is limited to an amount equal to the lesser of fifty dollars (\$50.00), or the amount declared by Purchaser. Should Purchaser elect to declare an amount greater than fifty dollars (\$50.00), Purchaser must pay Seller additional compensation of an amount to be determined by the Seller, to increase the maximum amount of Seller's liability up to the declared amount, however, such option must be exercised by written agreement between Seller and Purchaser, entered into prior to the related transaction(s).

17. SEVERABILITY:

If any provision of this Agreement is held to be unenforceable, this Agreement shall be deemed to be amended to the extent necessary to make it enforceable. In the event any provision is unenforceable, the remaining provisions remain in full force and effect. The headings of this Agreement are for convenience only and are not a part of the Agreement.